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 CHRISTOPHER E. WUTHMANN & ALLISON
 ROCK, Husband & Wife

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RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TEH

CHRISTOPHER E. WUTHMANN &
 ALLISON ROCK, Husband & Wife,

Plaintiffs,

v.

STEPHEN M. ACKLEY & MARYAN M.
 ACKLEY, husband & wife; BRADLEY L.
 SMITH & JOYCE J. SMITH, husband &
 wife; PACIFIC PENINSULA GROUP;
 WHITEHAWK LIMITED LIABILITY
 COMPANY; and DOES 1 THROUGH 100

Defendants.

CASE NO. 06-1412

**COMPLAINT FOR DAMAGES,
 RESTITUTION, AND INJUNCTIVE
 RELIEF**

- § 10(b) 1934 Act
- § 12(a) 1933 Act
- § 25401 Corp.C.
- § 25503 Corp.C.
- Breach, Fiduciary Duty
- Breach of Contract
- Fraud: § 1710(1) C.C.
- Deceit: § 1710(3) C.C.
- Negligence Misrepresentation:
 § 1710(2) C.C.
- Negligence Per Se
- Failure to Pay Demand Notes
- § 17200 B.& P.C.
- Bad Faith Employment Termination

DEMAND FOR A JURY TRIAL**JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction under 28 U.S.C. section 1331, in that this case arises under the laws of the United States, to wit, § 10(b) of the Securities Exchange Act of 1934 (the "1934 Act"), Rule 10b-5 (17 C.F.R. § 240.10b-5) promulgated pursuant to the 1934

1 Act, and §§ 5 and 12(a) of the Securities Act of 1933 (the "1933 Act").

2 2. The court has supplemental jurisdiction under 28 U.S.C. § 1367(a) in that the state
3 law claims of Plaintiffs CHRISTOPHER E. WUTHMANN and ALLISON ROCK are so related
4 to the claims over which the Court exercises original jurisdiction that they form part of the same
5 case or controversy under Article III of the United States Constitution.

6 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
7 substantial part of the events giving rise to the claims occurred within the District, and because
8 one or more defendants resides within the District, conducts business within the District, and has
9 engaged in, and continues to engage in, acts of selling and promoting goods, products, and
10 services in the District.

11 PARTIES

12 4. Plaintiffs CHRISTOPHER E. WUTHMANN and ALLISON ROCK ("Plaintiffs")
13 are California residents having their principal residence in San Carlos, California. Plaintiffs are
14 husband and wife, and as such Plaintiffs each have a community property interest in such of their
15 tangible and intangible property as noted herein. Further, Plaintiffs have each and together been
16 subject to the violations of law, breaches of contract, and torts noted herein.

17 5. On information and belief, Plaintiffs allege that Defendants STEPHEN M.
18 ACKLEY and MARYAN M. ACKLEY are husband and wife, have their principal residence in
19 Atherton, California, and have at all times relevant a community property interest in such of their
20 Pacific Peninsula Group equity stock as is noted herein. Further, Defendants STEPHEN M.
21 ACKLEY and MARYAN M. ACKLEY and DOES ONE through FIFTY (hereinafter
22 "ACKLEY") have each and together been responsible for the violations of law, breaches of
23 contract, and torts noted herein.

24 6. On information and belief, Plaintiffs allege that Defendants BRADLEY L. SMITH
25 and JOYCE J. SMITH are husband and wife, have their principal residence in Menlo Park,
26 California, and have at all times relevant a community property interest in such of their Pacific
27 Peninsula Group equity stock as is noted herein. Further, Defendants BRADLEY L. SMITH and
28 JOYCE J. SMITH and DOES FIFTY-ONE through ONE HUNDRED (hereinafter "SMITH")

1 have each and together been responsible for the violations of law, breaches of contract, and torts
2 noted herein.

3 7. On information and belief, Plaintiffs allege that Defendants DOES ONE to ONE
4 HUNDRED have a property interest in such of the Pacific Peninsula Group equity stock as is
5 noted herein. Further, DOES ONE to ONE HUNDRED have each and together been responsible
6 for the violations of law, breaches of contract, and torts noted herein.

7 8. The true names of Defendants DOES 1 through 100 are unknown to Plaintiffs at
8 this time. When their identifies are ascertained, the complaint shall be amended to reflect their
9 true names.

10 9. On information and belief Plaintiffs alleges that Defendants STEPHEN M.
11 ACKLEY, MARYAN M. ACKLEY, BRADLEY L. SMITH, JOYCE J. SMITH, and DOES
12 ONE to ONE HUNDRED were each the agent of the other Defendants, and that each of the
13 Defendants noted herein ratified the acts and omissions of the other Defendants noted herein.

14 10. On information and belief, Plaintiffs allege that Defendant PACIFIC PENINSULA
15 GROUP is an active California corporation that was incorporated in 1989 and is headquartered in
16 Menlo Park, California. PACIFIC PENINSULA GROUP is a real estate development company.

17 11. On information and belief, Plaintiffs allege that Defendant WHITEHAWK
18 LIMITED LIABILITY COMPANY ("WHITEHAWK L.L.C.") is an active California limited
19 liability company, founded in 2003, and headquartered in Menlo Park, California. On
20 information and belief, Plaintiffs allege that WHITEHAWK L.L.C. is wholly controlled by
21 ACKLEY and SMITH, and is a commonly owned and affiliated entity of PACIFIC PENINSULA
22 GROUP.

23 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

24 12. On information and belief, Plaintiffs allege that in 1989 ACKLEY and SMITH
25 formed a California corporation named PACIFIC PENINSULA GROUP ("PPG"). PPG is
26 denominated by California Secretary of State's corporation identification number 1636853. On
27 information and belief, Plaintiffs allege that immediately thereafter they caused to be issued to
28 themselves 100% of the outstanding shares issued by PPG. PPG undertakes real estate

development, and also provides various services to a number of limited liability companies owned and controlled entirely by ACKLEY and SMITH, or which are owned almost entirely by ACKLEY and SMITH and controlled by ACKLEY and SMITH.

13. On information and belief, Plaintiffs allege that the records at the Office of the California Department of Corporations show that the 1989 issuance of shares of stock of PPG to ACKLEY and SMITH was not qualified, nor was there any attempt to seek an exemption from the obligation of the issuer, PPG, to qualify the issuance of shares to ACKLEY and SMITH. On information and belief, Plaintiffs allege that this constitutes a violation of Section 25110 of the California Corporate Securities Act of 1968, which states that it is unlawful to offer or sell any security in California unless such sale has been qualified or is exempt from the obligation to qualify under State law. On information and belief, Plaintiffs allege that the records of the Securities and Exchange Commission indicate that no record exists of PPG having registered the 1989 offering of stock, nor is there any evidence of a filing of a notice of exemption. On information and belief, Plaintiffs allege that under Section 5 of the 1933 Act, 15 U.S.C. Section 77e, all offers and sales of securities must be registered or exempt from registration.

Christopher Wuthmann Purchases Initial 10% Interest in PPG

14. Plaintiff CHRISTOPHER WUTHMANN commenced employment with PPG in May 1996. His hard work and diligence brought value and benefits to ACKLEY and SMITH and PPG. Accordingly, over time, he was given the title of vice president and rewarded with a salary increase.

15. In 1998 as a reward for his hard work and diligence, ACKLEY and SMITH invited Plaintiff CHRISTOPHER WUTHMANN to become a shareholder of PPG and sold Plaintiff CHRISTOPHER WUTHMANN, from their personal share holdings, 10% of the total issued and outstanding equity shares of PPG (the "First 10%"). Since ACKLEY and SMITH owned 100% of the outstanding equity of PPG, to accomplish this ACKLEY and SMITH each sold Plaintiff CHRISTOPHER WUTHMANN 5% of the equity in the company from their personal holdings. See Exhibits "A" and "B" for a copy of the 1998 Restricted Stock Purchase Agreement involving Defendants Stephen and MaryAn Ackley and Bradley Smith and Joyce Smith, as sellers, and

1 Plaintiffs as buyers.

2 16. On information and belief, Plaintiffs allege that the records of the Office of the
3 California Department of Corporations show that the 1998 issuance of shares of stock of PPG by
4 ACKLEY and SMITH was not qualified, nor was there any attempt to seek an exemption from
5 the obligation of the issuer to qualify the issuance of shares. On information and belief, Plaintiffs
6 allege that this constitutes a violation of Section 25130 of the California Corporate Securities Act
7 of 1968, which states that it is unlawful to offer or sell any security in California unless such sale
8 has been qualified or is exempt from the obligation to qualify. On information and belief,
9 Plaintiffs allege that the records of the Securities and Exchange Commission indicate that no
10 record exists of PPG or ACKLEY or SMITH having registered the 1998 offering of stock, nor did
11 any evidence exist of the filing of a notice of exemption. On information and belief, Plaintiffs
12 allege that under Section 5 of the 1933 Act, 15 U.S.C. Section 77e, all offers and sales of
13 securities must be registered or exempt from registration, and as such the 1998 sale was in
14 violation of Section 5 of the 1933 Act.

15 17. The shares conveyed to Plaintiffs in 1998 were owned as community property by
16 Plaintiffs, and on information and belief Plaintiffs allege this ownership entitled Plaintiff
17 CHRISTOPHER WUTHMANN to a 10% distribution of the after-tax profits of PPG; Plaintiffs
18 thus owned as community property 10% of the equity in PPG. On information and belief,
19 Plaintiffs allege that they were never issued share certificates as a result of the First 10%
20 transaction. On information and belief, Plaintiffs allege that as a result of this transaction
21 ACKLEY and SMITH each owned 45% of the equity of PPG.

22 18. On information and belief, Plaintiffs allege that, following their acquisition of the
23 First 10%, in addition to developing real estate projects in its own name, PPG set up a number of
24 limited liability companies (LLC's) to develop various projects. On information and belief,
25 Plaintiffs allege that the ownership of these LLC's always reflected the ratio of share ownership
26 of PPG. On information and belief, Plaintiffs allege that ACKLEY and SMITH also set up other
27 LLC's to provide debt financing and other services ("Special Purpose LLC's") to PPG and the
28 LLC's set up to develop projects; these Special Purpose LLC's were often not owned in the same

ratio as the share ownership of PPG, although Plaintiff CHRISTOPHER WUTHMANN as well as ACKLEY and SMITH each had some ownership interest in these Special Purpose LLC's.

The Parties' Roles and Responsibilities at PPG

19. On information and belief, Plaintiffs allege that at all times during CHRISTOPHER WUTHMANN's tenure at PPG, the two majority shareholders, ACKLEY and SMITH, managed and controlled the company.

20. On information and belief, Plaintiffs allege that although CHRISTOPHER WUTHMANN was kept apprised of the broad parameters of specific major investments contemplated by PPG, such as what a proposed project would return, what it would cost, how long the construction phase would last, what investment of time and management skills would be involved, the decisions on the projects by and large were made and determined according to the interests of ACKLEY and SMITH. On information and belief, Plaintiffs allege that CHRISTOPHER WUTHMANN's assent to these projects was, thus, pro forma and not solicited or obtained as a co-manager or co-equal principal; in short, his participation on a managerial level was consistent with his status as a minority shareholder.

21. On information and belief, Plaintiffs allege that during this period defendant MaryAn Ackley served as an accountant for PPG. On information and belief, Plaintiffs allege that to the extent a question arose as to the company's financial position, CHRISTOPHER WUTHMANN, along with Stephen Ackley and Bradley Smith, relied on MaryAn Ackley to provide reliable and accurate financial summaries, opinions, and advice.

22. In contrast to the management roles played by Stephen Ackley and Bradley Smith, CHRISTOPHER WUTHMANN took the field coordinator role in developing large commercial projects built by the company between 1998 and 2005. By way of example only, one of the projects CHRISTOPHER WUTHMANN helped to manage was called Pacific Hacienda. CHRISTOPHER WUTHMANN negotiated the purchase of the three relevant parcels, secured the financing for construction, obtained the appropriate local governmental approvals, oversaw the preparation of the environmental impact report, worked with the architects on the design of the buildings and related features, hired the general contractor, assisted with the leasing of rental

space once the buildings were completed, and helped with the sale of the condominium offices.

23. On information and belief, Plaintiffs allege that as a result of this division of labor, CHRISTOPHER WUTHMANN was not informed of the financial performance of the company on a regular basis. On information and belief, Plaintiffs allege that notwithstanding his position as Secretary of PPG, CHRISTOPHER WUTHMANN received reports on PPG's income statement and balance sheet only twice a year. On information and belief, Plaintiffs allege that CHRISTOPHER WUTHMANN received a K-1 every year showing his allocation of income for tax purposes. On information and belief, Plaintiffs allege that twice a year, in December and July, an informal estimate of PPG and LLC profitability was prepared by the company controller, Sherry Dumont. On information and belief, Plaintiffs allege that the version presented in July was usually understood to be highly provisional; the information presented in December along with the provisional draft financials for PPG and the LLC's was offered for use in estimating individual tax liability. On information and belief, Plaintiffs allege that other than this limited summary information, CHRISTOPHER WUTHMANN did not receive any detailed information about PPG's profitability at any time.

Christopher Wuthmann Purchases Another 10% Interest in PPG

24. Plaintiff CHRISTOPHER WUTHMANN continued to bring value and benefits to ACKLEY and SMITH and PPG, and as such in December, 2000 ACKLEY and SMITH sold to Plaintiff CHRISTOPHER WUTHMANN an additional 10% of the equity in PPG from their personal holdings (the "Second 10%"). See Exhibits "C" and "D" for a copy of the 2000 Restricted Stock Purchase Agreements involving Defendants Stephen and MaryAn Ackley and Bradley Smith and Joyce Smith, as sellers, and Plaintiffs as buyers. On information and belief, Plaintiffs allege that stated in general terms the purchase price was to be based on a rolling three-year average of PPG's economic performance. A calculation of the result of this formula using data supplied by ACKLEY and SMITH, as described herein, is set forth in Exhibit "E".

25. On information and belief, Plaintiffs allege that in the course of negotiating this additional purchase of equity in PPG, ACKLEY and SMITH made telephone calls, sent mail, sent e-mail messages, and made verbal statements to Plaintiff CHRISTOPHER WUTHMANN

1 pertaining to the purchase of the Second 10% and the alleged price thereof.

2 26. On information and belief, Plaintiffs allege that the records of the Office of the
3 California Department of Corporations show that the 2000 issuance of shares of stock of PPG by
4 ACKLEY and SMITH was not qualified, nor was there any attempt to seek an exemption from
5 the obligation of the issuer to qualify the issuance of shares by ACKLEY and SMITH. On
6 information and belief, Plaintiffs allege that this constitutes a violation of Section 25130 of the
7 California Corporate Securities Act of 1968, which states that it is unlawful to offer or sell any
8 security in California unless such sale has been qualified or is exempt from qualification. On
9 information and belief, Plaintiffs allege that the records of the Securities and Exchange
10 Commission indicate that no record exists of either PPG or ACKLEY or SMITH registering the
11 2000 offering of stock, nor is there any evidence of the filing of a notice of exemption. On
12 information and belief, Plaintiffs allege that under Section 5 of the 1933 Act, 15 U.S.C. § 77e, all
13 offers and sales of securities must be registered or exempt from registration, and as such the 2000
14 sale was in violation of Section 5 of the 1933 Act.

15 27. Thus, as a result of this equity purchase in 2000, Plaintiffs owned as community
16 property 20% of the equity in PPG; on information and belief, Plaintiffs allege that thereafter
17 ACKLEY and SMITH each owned 40%. On information and belief, Plaintiffs allege that as a
18 result of the 2000 sale Plaintiff CHRISTOPHER WUTHMANN was entitled to a distribution of
19 20% of the after-tax profits of PPG. On information and belief, Plaintiffs allege that PPG
20 continued also to develop projects itself, and to set up LLC's to develop various projects. On
21 information and belief, Plaintiffs allege that the ownership of these project development LLC's
22 once again reflected the ratio of share ownership of PPG.

23 28. On information and belief, Plaintiffs allege that at no time did ACKLEY and
24 SMITH disclose to Plaintiffs that the equity shares sold to Plaintiffs were not qualified or exempt
25 from qualification pursuant to California securities law and were also not registered or exempt
26 from registration under Federal securities law.

27 Misrepresentation of Purchase Price for the Second 10%

28 29. On information and belief, Plaintiffs allege that at the time that the purchase of the

1 Second 10% was negotiated, Stephen Ackley, Bradley Smith, and CHRISTOPHER
2 WUTHMANN agreed that there was some unfairness to creating a fixed price for the shares in
3 PPG because the fortunes of the company, and thus the return on investment, could fluctuate. On
4 information and belief, Plaintiffs allege that to address this issue the parties negotiated a purchase
5 formula rather than a fixed purchase price. See Paragraph A.2. of the agreements set forth as
6 Exhibits "C" and "D" hereto. On information and belief, Plaintiffs allege that this purchase price
7 formula relied upon a three-year average of PPG's economic performance.

8 30. On information and belief, Plaintiffs allege that at no time during 2003 did
9 ACKLEY and SMITH, who had sole access to the figures called for in the purchase price, inform
10 Plaintiffs what the recalculated purchase price of the Second 10% was, as required under the
11 terms of the agreements set forth in Exhibit "C" and "D".

12 31. On information and belief, Plaintiffs allege that they made payments on the
13 purchase of the Second 10% on the dates and in the amounts noted herein:

- 14 a. December 22, 2000: \$200,000.
- 15 b. July 27, 2001: \$30,000.
- 16 c. August 17, 2001: \$30,000.
- 17 d. December 31, 2001: \$175,000.

18 32. On information and belief, Plaintiffs allege that each receipt of the moneys set
19 forth in Paragraph 31, combined with the failure of ACKLEY and SMITH, upon each receipt, to
20 inform Plaintiffs of the true and correct purchase price of the Second 10%, constituted a separate
21 and independent fraud and deceit committed upon Plaintiffs.

22 33. On information and belief, Plaintiffs allege that to this date Plaintiffs have not
23 received any share certificates related to the purchase of the Second 10%, nor have Plaintiffs
24 made payments to ACKLEY and SMITH that would constitute a total payment for the Second
25 10% based upon the numerous and independent false and fraudulent representations and deceptions
26 as to the purchase price made by ACKLEY and SMITH, as noted herein. On information and
27 belief, Plaintiffs allege that the transaction involving the Second 10% is not complete, and thus
28 the transaction is ongoing, because the terms and conditions precedent to taking ownership of the

1 Second 10%, as set forth in Exhibits "C" and "D", Paragraph A.3., have not been completed.

2 34. CHRISTOPHER WUTHMANN's reliance upon each of the independent
3 fraudulent representations and deceits by ACKLEY and SMITH was reasonable given the
4 aforementioned division of responsibilities for management of the company and their higher
5 access to company financial data. As a result of this reasonable reliance, CHRISTOPHER
6 WUTHMANN failed to question the company's failure to provide a recalculation of the purchase
7 price annually as called for in Paragraph A.2. of the agreements set forth in Exhibits "C" and "D",
8 and instead continued to make large, regular, lump sum payments at every opportunity to pay
9 down what he was informed and understood was a large indebtedness of \$1.2 million for his
10 purchase of the Second 10%.

11 35. On information and belief, Plaintiffs allege that, in fact, each of the independent
12 representations of and deceits about the purchase price by ACKLEY and SMITH was totally false
13 and fraudulent, a fact known to ACKLEY and SMITH. Using data provided by ACKLEY and
14 SMITH during severance negotiations in 2005, as noted more fully below, the formula in the
15 contract for the Second 10% produces a sales price of \$12,186. See Exhibit "E" hereto for a
16 calculation of the purchase price using data provided by ACKLEY and SMITH in the summer of
17 2005 and calculated pursuant to the formula set forth in the contracts attached in Exhibits "C" and
18 "D".

19 36. As noted, in reliance on what they believed was the good faith and fair dealing of
20 ACKLEY and SMITH, Plaintiffs caused to be paid to ACKLEY and SMITH a total of \$405,000.
21 In fact, Plaintiffs are owed a refund for the overpayment of \$392,814 since the purchase price
22 under the contract was \$12,186, not the \$1.2 million as ACKLEY and SMITH alleged through a
23 series of separate and independent frauds and deceits upon Plaintiffs.

24 37. On information and belief, Plaintiffs allege that ACKLEY and SMITH have
25 conveyed misleading and fraudulent information, and information in support of their various and
26 independent frauds and deceits, through the use of telephone calls, mail, e-mails, and verbal
27 statements made to Plaintiffs.

28 38. On information and belief, Plaintiffs allege that ACKLEY and SMITH have used

1 widely divergence schemes for the valuation of the equities sold to Plaintiffs.

- 2 a. In the 1998 sale, the value of the stock was determined by a fixed amount
- 3 set forth in the purchase agreement. See Exhibits "A" and "B", Section
- 4 A.1. of these agreement.
- 5 b. In the 2000 sale, the value of the stock was determined by a formula
- 6 contained in the purchase agreement. See Exhibits "C" and "D", Section
- 7 A.2. of these agreement.
- 8 c. In loan applications made to various financial institutions, ACKLEY and
- 9 SMITH asserted that each 10% of the equity of PPG was worth \$1 million,
- 10 thus valuing the shares of Plaintiffs at \$2 million. ACKLEY and SMITH
- 11 are estopped to deny that the shares of PPG have at least this value since
- 12 otherwise their representations to the financial institutions would be a
- 13 crime pursuant to 18 U.S.C. § 1014.

14 39. On information and belief, Plaintiffs allege that the three methods described
 15 hereinabove in Paragraph 38 are each different and inconsistent one from the other, and that this
 16 difference and inconsistency causes there to be a material misstatement of fact whenever the
 17 value of the equity at issue herein is described. On information and belief, Plaintiffs allege that
 18 this difference and inconsistency is material and supports rescission, as sought herein, since there
 19 was never a meeting of the minds on the issue of valuation.

20 Issuance of Notes Plus Equity Creates A Continuous Offering from 1998 to 2005

21 40. On information and belief, Plaintiffs allege that the issuance of the PPG shares and
 22 the "demand notes" described herein are part of single plan of financing which constitutes an
 23 integrated offering not exempt from qualification or registration under applicable State or Federal
 24 securities law.

25 41. As set forth in the Eleventh Cause of Action herein, Plaintiffs did provide to PPG
 26 or its wholly owned and controlled affiliated entity WHITEHAWK L.L.C. moneys from August,
 27 2002 through October, 2005. These moneys totaled \$839,239.31.

28 42. On information and belief, Plaintiffs allege that in return for the moneys provided

1 to PPG and WHITEHAWK L.L.C. Plaintiffs received what purported to be “demand notes” or, in
2 the case of the two loans made in October, 2005, the promise of “demand notes” in their usual
3 form and terms.

4 43. On information and belief, Plaintiffs allege that the so-called “demand notes” are
5 securities within the meaning of § 25109 Corporations Code and 15 U.S.C. § 77(b)(1).

6 44. On information and belief, Plaintiffs allege that in the course of discussing the
7 demand notes, ACKLEY and SMITH made telephone calls, sent mail, sent e-mail messages, and
8 made verbal statements to Plaintiff CHRISTOPHER WUTHMANN pertaining to the notes and
9 the alleged terms thereof.

10 45. On information and belief, Plaintiffs allege that the records at the Office of the
11 California Department of Corporations show that none of the issuance of the “demand notes” of
12 PPG and WHITEHAWK L.L.C. set forth in the Eleventh Cause of Action herein were qualified,
13 nor was there any attempt to seek an exemption from the obligation of the issuer to qualify the
14 issuance of “demand notes”. On information and belief, Plaintiffs allege that this constitutes a
15 violation of Section 25110 of the California Corporate Securities Act of 1968, which states that it
16 is unlawful to offer or sell any security in California unless such sale has been qualified or exempt
17 from qualification. On information and belief, Plaintiffs allege that the records of the Securities
18 and Exchange Commission indicate that no record exists of PPG or WHITEHAWK L.L.C.
19 having registered the offering of any of the “demand notes”, nor is there any evidence of a filing
20 of a notice of exemption. On information and belief, Plaintiffs allege that under Section 5 of the
21 1933 Act, 15 U.S.C. Section 77e, all offers and sales of the “demand notes” must be registered or
22 exempt from registration.

23 46. On information and belief, Plaintiffs allege that at no time that any of the “demand
24 notes” were provided to Plaintiffs nor thereafter were the Plaintiffs provided with that financial
25 information regarding PPG and WHITEHAWK L.L.C. mandated by State and Federal law, the
26 true value of the equity securities of PPG and thus the true value of the “demand notes” issued,
27 nor the possibility that the interest rate stated in said “demand notes” was usurious, thereby
28 making a determination of return on investment difficult, impossible, or illusory.

Termination of Christopher Wuthmann's Employment with PPG

47. On information and belief, Plaintiffs allege that in comparison to fiscal year 2000, which was highly profitable, fiscal years 2001, 2002, 2003, 2004, and 2005 were not as financially rewarding for PPG or the LLC's in terms of after-tax profits.

48. On information and belief, Plaintiffs allege that in 2005, ACKLEY and SMITH realized that the many projects under development, near completion, coming onto market, or likely soon to be sold would produce in the post-2005 time period very substantial returns for PPG and the LLC's in which ACKLEY, SMITH, and the Plaintiffs were invested. On information and belief, Plaintiffs allege that out of avarice, covetousness, and greed, ACKLEY and SMITH willfully and intentionally conspired, planned, and decided to terminate Plaintiff CHRISTOPHER WUTHMANN from his employment with PPG in order to convert, acquire, annex and obtain those moneys and that cashflow that would otherwise have gone to Plaintiffs because of their ownership interest in PPG and various LLC's. On information and belief, Plaintiffs allege that not satisfied with the likelihood that they, ACKLEY and SMITH, would make many millions of dollars of company profit, ACKLEY and SMITH conspired and acted to deprive Plaintiff CHRISTOPHER WUTHMANN of his share of the return. On information and belief, Plaintiffs allege that at the first hint that PPG was returning to a period of significant returns, ACKLEY and SMITH took steps to cut out Plaintiff CHRISTOPHER WUTHMANN.

49. On information and belief, Plaintiffs allege that in July 2005 Defendants Stephen Ackley and Bradley Smith undertook, with the knowledge, affirmation, support, and concurrence of their spouses, to inform Plaintiff CHRISTOPHER WUTHMANN that they wished to terminate his existing employment and association with PPG. On information and belief, Plaintiffs allege that the applicable contract between the parties requires Plaintiffs to sell all of their PPG shares to ACKLEY and SMITH upon termination of Plaintiff CHRISTOPHER WUTHMANN's employment with the company. See Exhibit "H". Accordingly, on information and belief, Plaintiffs allege that ACKLEY and SMITH knew and intended that such a termination would garner unto themselves the benefits and cashflow that would otherwise go to Plaintiff CHRISTOPHER WUTHMANN, and thus to both Plaintiffs. To "facilitate" this transition,

1 ACKLEY and SMITH presented to Plaintiff CHRISTOPHER WUTHMANN a "briefing book"
2 that allegedly contained all information that would be necessary for negotiation of Plaintiff
3 CHRISTOPHER WUTHMANN's separation from PPG.

4 50. As part of their so-called severance discussions, Plaintiff CHRISTOPHER
5 WUTHMANN met with Stephen Ackley and/or Bradley Smith to discuss terms and conditions
6 for his departure, the transition of his responsibilities, and the financial disposition of his existing
7 interests in PPG and the various LLC's in which CHRISTOPHER WUTHMANN had an interest.
8 There were a number of meetings over several months.

9 51. On information and belief, Plaintiffs allege that in the guise of negotiating a
10 severance package, Defendants Stephen Ackley and Bradley Smith, with the knowledge,
11 affirmation, support, and concurrence of their spouses, discussed various options and
12 arrangements with Plaintiff CHRISTOPHER WUTHMANN. On information and belief,
13 Plaintiffs allege that as part of their negotiating strategy and to put pressure upon Plaintiff
14 CHRISTOPHER WUTHMANN, ACKLEY and SMITH reiterated over and over again that the
15 purchase price of the Second 10% of the shares was \$1.2 million. Defendants Stephen Ackley
16 and Bradley Smith also repeatedly conveyed during these negotiations that the amount still owed
17 by Plaintiffs on the purchase of the Second 10% was in excess of \$1.1 million in principal and
18 interest. On information and belief, Plaintiffs allege that this representation at this time was a
19 new and independent fraud since it was made in a written form in a "briefing book" given to
20 Plaintiff CHRISTOPHER WUTHMANN that allegedly showed various financial "facts" about
21 PPG and the LLC's and was made for the purpose of defrauding Plaintiffs out of their shares in
22 PPG and their interests in the various LLC's. In fact, the briefing book provided absolutely no
23 back-up for the \$1.2 million purchase figure for the Second 10%, but simply set out the figure as
24 though it were a truism. On information and belief, Plaintiffs allege that ACKLEY and SMITH
25 did not set out any back-up or calculation because they knew at that time that the formula
26 contained in the 2000 agreements would result in a purchase price calculation of \$12,186, as is set
27 forth in Exhibit "E".

28 52. On information and belief, Plaintiffs allege that ACKLEY and SMITH intended

1 that this allegedly unpaid principal and interest (an amount in excess of \$1.1 million) for the
2 Second 10% would be used as leverage to cause Plaintiff CHRISTOPHER WUTHMANN to
3 surrender or lessen his interests in PPG and the various project LLC's, and to have no opportunity
4 to participate in future project LLC's and the after-tax income of PPG and the existing LLC's.
5 On information and belief, Plaintiffs allege that ACKLEY and SMITH knew at this time that in
6 fact such a representation about the purchase price of the Second 10% was false and fraudulent,
7 made such representation with the intent to deceive and mislead Plaintiffs, and intentionally and
8 knowingly withheld from Plaintiffs the true fact that the purchase price was \$12,186 under the
9 terms of the 2000 Restricted Stock Purchase Agreement. See Exhibit "E".

10 53. On information and belief, Plaintiffs allege that the strategy of ACKLEY and
11 SMITH was to produce a synoptic outline of a severance deal, and then to promise to produce
12 documents for Plaintiffs to review in short order. On information and belief, Plaintiffs allege that
13 in fact, ACKLEY and SMITH did not cause the documents to be produced in the time frame
14 promised, but only provided them shortly before the end of 2005. On information and belief,
15 Plaintiffs allege that ACKLEY and SMITH then pressured Plaintiff CHRISTOPHER
16 WUTHMANN to sign these agreements forthwith even though their tax implications were
17 unknown and, among other shortcomings, they contained a one-sided release and waiver by
18 Plaintiffs of any conceivable cause of action that Plaintiffs might have against ACKLEY and
19 SMITH for any wrongdoing of any type. On information and belief, Plaintiffs allege that the
20 presence of such an abusive and one-sided waiver demonstrated that ACKLEY and SMITH were
21 well aware of the fraud and other nefarious acts they had committed, and was an attempt by
22 ACKLEY and SMITH to insulate themselves from the wrongful acts, fraud, and deception they
23 had committed. Plaintiffs requested further documents for study (such as some of the relevant
24 documents needed to calculate the alleged values and nature of the deals proposed), and also
25 requested time to have the proposed agreements reviewed and to ascertain their tax implications.

26 54. On information and belief, Plaintiffs allege that these actions, combined with the
27 false and fraudulent representations about the debt which Plaintiffs were alleged to still owe
28 pertaining to the purchase of the Second 10% (an amount that Defendants purported was in

1 excess of \$1.1 million), deprived Plaintiffs of their ability to bargain effectively in order to obtain
2 favorable terms in any severance package and to obtain fair value for their financial interest in
3 PPG and the LLC's. As such, by way to example only, Plaintiffs were deprived of an opportunity
4 to obtain an expanded percentage of the profits from the Whitehawk development project or to
5 invest in a Redwood City joint venture project that was then being moved forward through the
6 ongoing efforts of Plaintiff CHRISTOPHER WUTHMANN, but which at that time did not have
7 all the final City approvals and financing necessary to move forward.

8 55. On information and belief, Plaintiffs allege that as part of their scheme to make
9 certain that Plaintiffs did not comprehend the nature of the frauds being committed and to deprive
10 Plaintiff CHRISTOPHER WUTHMANN of his share of future income through PPG and the
11 various projects established as LLC's, ACKLEY and SMITH refused to provide Plaintiffs with a
12 reasonable time to evaluate the transactions and relevant documents.

13 56. By correspondence dated December 27, 2005, ACKLEY and SMITH sent a letter
14 to CHRISTOPHER WUTHMANN terminating his employment with PPG.

15 Christopher Wuthmann's Rights and Obligations on Termination of Employment

16 57. CHRISTOPHER WUTHMANN's separation from the company also entitles him
17 to benefits under a Salary Continuation agreement. See Exhibit "G". More specifically, the
18 Salary Continuation Agreement requires PPG to pay CHRISTOPHER WUTHMANN \$125,000
19 per year, in monthly installments, beginning January 1, 2006 and continuing through December
20 31, 2013. Although ACKLEY and SMITH have acknowledged in writing the validity of the
21 Salary Continuation Agreement, PPG has not yet commenced payment and is in default on that
22 obligation.

23 58. As of the filing of this Complaint, Plaintiff CHRISTOPHER WUTHMANN is
24 appealing administratively the denial of the benefits of this Salary Continuation Agreement.
25 Once that process has been concluded, or is rendered futile, if Plaintiff CHRISTOPHER
26 WUTHMANN has not obtained the benefits to which he is entitled, then Plaintiff
27 CHRISTOPHER WUTHMANN will amend this complaint to include said ERISA violation.

28 59. On information and belief, Plaintiffs allege that in furtherance of their scheme to

1 deprive Plaintiff CHRISTOPHER WUTHMANN of the benefits and cashflow of projects and
2 activities of PPG and the LLC's in which Stephen Ackley, Bradley Smith, and CHRISTOPHER
3 WUTHMANN have always invested in the past in proportion to their share interest in PPG,
4 ACKLEY and SMITH have misappropriated PPG corporate opportunities for themselves. On
5 information and belief, Plaintiffs allege that this misappropriation has utilized a variety of
6 schemes, including (but not limited to) using existing LLC's in which ACKLEY and/or SMITH
7 have an interest (but not Plaintiffs) to develop projects that are corporate opportunities of PPG,
8 and establishing new LLC's to develop projects that are corporate opportunities of PPG in which
9 ACKLEY and SMITH (but not Plaintiffs) have an interest.

10 FIRST CAUSE OF ACTION

11 (Violation of Section 10(b) of the 1934 Act and Rule 10b-5 Against ACKLEY and SMITH, PPG,
12 and WHITEHAWK L.L.C.)

13 60. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through -- of this
14 Complaint.

15 61. ACKLEY and SMITH, PPG, and WHITEHAWK L.L.C. violated § 10(b) of the
16 1934 Act and Rule 10b-5 in that they:

- 17 a. Employed devices, schemes and artifices to defraud,
- 18 b. Made untrue statements of material facts and omitted to state material facts
19 necessary in order to make the statements made, in light of the
20 circumstances under which they were made, not misleading; or,
- 21 c. Engaged in acts, practices, and a course of business that operated as a fraud
22 or deceit upon Plaintiffs in connection with their purchase of the equity
23 noted herein and with their obtaining of the "demand notes".

24 62. Plaintiffs suffered damages in that, in reliance on the integrity of ACKLEY and
25 SMITH, they paid an inflated price for the equity shares noted. Plaintiffs would not have
26 purchased the equity at the price paid, or at all, if they had been aware that the price had been
27 artificially and falsely inflated by ACKLEY's and SMITH's misleading statements. Further,
28 Plaintiffs suffered damages in that they were deceived as to the value of the "demand notes".

1 Plaintiffs would not have purchased the equity at the price paid, or at all, nor taken the “demand
2 notes”, if they had been aware that the price had been artificially and falsely inflated by
3 ACKLEY’s and SMITH’s misleading statements and that the value of the “demand notes” was
4 not as represented to be.

5 63. Plaintiffs suffered damages in that, in reliance on the integrity of ACKLEY and
6 SMITH and PPG and WHITEHAWK L.L.C., they purchased the equity shares noted and
7 obtained the “demand notes” without being aware that the shares and “demand notes” were not
8 qualified or exempt from qualification under California law and were neither registered nor
9 exempt from registration under Federal law. Plaintiffs would not have purchased the equity at all
10 if they had been aware that the shares were not legally issued and not lawfully available for resale
11 by ACKLEY and SMITH. Plaintiffs would not have accepted the “demand notes” if they had
12 been aware that the “demand notes” were not legally issued by PPG and WHITEHAWK L.L.C.

13 64. As a direct and proximate result of ACKLEY’s and SMITH’s wrongful conduct,
14 and the wrongful conduct of PPG and WHITEHAWK L.L.C., Plaintiffs suffered damages in
15 connection with their purchase of the shares.

- 16 a. Plaintiffs have over-paid for the Second 10% as noted herein, and are
17 therefore entitled to reimbursement of not less than \$392,814, with interest
18 thereon.
- 19 b. As a separate and independent basis for damages, Plaintiffs have been
20 deprived of the benefit of the bargain in the amount of the difference
21 between the cost of the shares under the 2000 agreements (see Exhibit “E”)
22 and the value that the shares were alleged to have had in filings made by
23 ACKLEY and SMITH in seeking loans from banks (\$1 million), to wit,
24 \$987,184.
- 25 c. Plaintiffs accepted legally invalid “demand notes” and thus have been
26 deprived of the benefit of the bargain in the amount of the principal
27 (\$713,639.31) plus their stated rate of interest.

28 **SECOND CAUSE OF ACTION**

(Violation of Section 12(a) of the 1933 Act, 15 U.S.C. § 771, Against ACKLEY and SMITH and PPG and WHITEHAWK L.L.C.)

65. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this Complaint.

66. ACKLEY and SMITH and PPG and WHITEHAWK L.L.C. violated 15 U.S.C. § 771 in that they:

- a. Offered to sell a security by oral communication; and,
- b. Made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

67. Plaintiffs suffered damages in that, in reliance on the integrity of ACKLEY and SMITH, they paid an inflated price for the equity shares noted. Plaintiffs suffered damages in that, in reliance on the allegedly proper conduct of PPG and WHITEHAWK L.L.C. in issuing the “demand notes”, they accepted notes that were not valid and were of questionable value.

68. As a direct and proximate result of ACKLEY’s and SMITH’s wrongful conduct, Plaintiffs are entitled to restitution of the moneys paid for the Second 10% to ACKLEY and SMITH in the amount of \$405,000, with interest thereon. As a direct and proximate result of PPG’s and WHITEHAWK L.L.C.’s wrongful conduct, Plaintiffs are entitled to restitution of the moneys “lent” (\$713,639.31), with interest thereon.

THIRD CAUSE OF ACTION

(Cause of Action for Damages for Securities Transaction Made Through Material Misrepresentation and Deceit Against ACKLEY and SMITH and PPG and WHITEHAWK L.L.C.: § 25401 Corporations Code)

69. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this Complaint.

70. As noted herein, in 2000 ACKLEY and SMITH each offered and sold to Plaintiffs 5% of the shares outstanding in PPG. They alleged that the price was \$1.2 million, whereas in reality under the contract formula the price was \$12,186. See Exhibit “E” hereto.

71. The transaction was by means of a written contract. See Exhibits "C" and "D" hereto. The contract did not include the purchase price, but did include a formula for calculating the purchase price. Plaintiffs were only informed later as to what the purchase price calculation allegedly produced, to wit, \$1.2 million. The representation was untrue. See Exhibit "E" hereto.

72. As part of their scheme, ACKLEY and SMITH and PPG and WHITEHAWK L.L.C. never disclosed to Plaintiffs that the securities had never been qualified or exempt from qualification and were not legal for sale under the applicable provisions of either State or Federal law.

73. As a result of ACKLEY's and SMITH's and PPG's and WHITEHAWK L.L.C.'s material misrepresentation as alleged herein, ACKLEY and SMITH and PPG and WHITEHAWK L.L.C. are liable to Plaintiffs, who are entitled, in lieu of rescission, to sue for damages as a result of ACKLEY's and SMITH's and PPG's and WHITEHAWK L.L.C.'s material misrepresentations and deceptions.

74. As a direct and proximate result of ACKLEY's and SMITH's wrongful conduct, Plaintiffs suffered damages in connection with their purchase of the shares.

- a. Plaintiffs have over-paid as noted herein, and are therefore entitled to reimbursement of not less than \$392,814, with interest thereon.
- b. As a separate and independent basis for damages, Plaintiffs have been deprived of the benefit of the bargain in the amount of the difference between the cost of the shares under the 2000 agreements (see Exhibit "E") and the value that the shares were alleged to have had in filings made by ACKLEY and SMITH in seeking loans from banks (\$1 million), to wit, \$987,184.
- c. Plaintiffs accepted legally invalid "demand notes" and thus have been deprived of the benefit of the bargain in the amount of the principal (\$713,639.31) plus their stated rate of interest.

FOURTH CAUSE OF ACTION

(Cause of Action for Rescission of Sale of Securities Not Qualified for Sale and for Restitution of

1 Consideration Paid Against ACKLEY and SMITH and PPG and WHITEHAWK L.L.C.: § 25503
 2 Corporations Code)

3 75. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
 4 Complaint.

5 76. As noted herein, ACKLEY and SMITH offered and sold to Plaintiffs 5% each of
 6 the shares outstanding in PPG. On information and belief, Plaintiffs allege that ACKLEY and
 7 SMITH were shareholders of PPG engaged in the secondary trading of the shares. As noted
 8 herein, PPG and WHITEHAWK L.L.C. offered and issued to Plaintiffs "demand notes".

9 77. The transaction regarding the Second 10% was by means of a written contract.
 10 See Exhibits "C" and "D" hereto.

11 78. On information and belief, Plaintiffs allege that the sale of the Second 10% was a
 12 non-issuer transaction in that it was not directly or indirectly consummated for the benefit of the
 13 issuer of the securities, and no portion of the purchase price was received by the issuer in any
 14 fashion. On information and belief, Plaintiffs allege that at the time of the Plaintiffs' acquisition
 15 the sale was subject to qualification, was not exempt from qualification, and was not and to the
 16 date of this Complaint has not been qualified as any kind of securities transaction with the
 17 Commissioner of Corporations.

18 79. On information and belief, Plaintiffs allege that at the time of the Plaintiffs'
 19 acquisition of the "demand notes" the notes were subject to qualification, were not exempt from
 20 qualification, and were not and to the date of this Complaint have not been qualified as any kind
 21 of securities transaction with the Commissioner of Corporations.

22 80. As a result of ACKLEY's and SMITH's and PPG's and WHITEHAWK L.L.C.'s
 23 described acts as alleged herein, ACKLEY and SMITH and PPG and WHITEHAWK L.L.C. are
 24 liable to Plaintiffs, who are entitled, and hereby do, rescind the above-described purchases.
 25 Plaintiffs will tender before entry of judgment to ACKLEY and SMITH and to PPG and
 26 WHITEHAWK L.L.C., respectively, the Second 10% which were purchased from ACKLEY and
 27 SMITH in December 2000 and the "demand notes" that were issued to Plaintiffs, as noted herein.

28 81. As a result of the acts of ACKLEY and SMITH, Plaintiffs seek restitution of the

1 \$405,000 paid to ACKLEY and SMITH for the Second 10%, as noted herein, with interest
 2 thereon. As a result of the acts of PPG and WHITEHAWK L.L.C., Plaintiffs seek restitution of
 3 the \$713,639.31 paid to PPG and WHITEHAWK L.L.C. for the "demand notes", as noted herein,
 4 with interest thereon.

5 **FIFTH CAUSE OF ACTION**

6 (Breach of Fiduciary Duty Against The Defendants)

7 82. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
 8 Complaint.

9 83. On information and belief, Plaintiffs allege that at all times relevant Defendants
 10 Stephen Ackley and Bradley Smith were the President and Chairman of PPG and directors of
 11 PPG. On information and belief, Plaintiffs allege that at all times relevant PPG was a corporation
 12 organized and existing under the General Corporation Law of California. As such, at all times
 13 relevant, Stephen Ackley and Bradley Smith owed Plaintiffs a fiduciary duty.

14 84. On information and belief, Plaintiffs allege that ACKLEY and SMITH own a
 15 dominant and controlling interest in PPG in that each currently owns, respectively, 40% of the
 16 equity of PPG. As such, at all times relevant, Stephen Ackley and Bradley Smith owed Plaintiffs
 17 a fiduciary duty.

18 85. On information and belief, Plaintiffs allege that Defendants Stephen Ackley and
 19 Bradley Smith, as noted herein, have utilized their positions as corporate officers and directors to
 20 further their private interests at the expense of the Plaintiffs. On information and belief, Plaintiffs
 21 allege that Defendants ACKLEY and SMITH have utilized their positions as majority
 22 shareholders to further their private interests at the expense of the minority shareholders (the
 23 Plaintiffs). On information and belief, Plaintiffs allege that they have taken intentional and
 24 deliberate steps to deprive Plaintiffs of the benefits that would flow to Plaintiffs in the years
 25 following 2005 in order to acquire, obtain, and convert said benefits to their own private gain.

26 86. On information and belief, Plaintiffs allege that Defendants Stephen Ackley and
 27 Bradley Smith, as noted herein, have utilized their positions as corporate officers and directors to
 28 mislead and defraud Plaintiffs as to the true and accurate purchase price of the Second 10% that

1 Plaintiffs are purchasing from the personal accounts of ACKLEY and SMITH. On information
2 and belief, Plaintiffs allege that Defendants ACKLEY and SMITH have utilized their positions as
3 majority shareholders to mislead and defraud Plaintiffs as to the true and accurate purchase price
4 of the Second 10% that Plaintiffs are purchasing from the personal accounts of ACKLEY and
5 SMITH.

6 87. On information and belief, Plaintiffs allege that Defendants Stephen Ackley and
7 Bradley Smith, as noted herein, have utilized their positions as corporate officers and directors to
8 convert corporate opportunities to their own private gain. On information and belief, Plaintiffs
9 allege that Defendants ACKLEY and SMITH have utilized their positions as majority
10 shareholders to convert corporate opportunities to their own private gain.

11 88. On information and belief, Plaintiffs allege that Defendants Stephen Ackley and
12 Bradley Smith, as noted herein, have utilized their positions as corporate officers and directors to
13 defraud Plaintiffs by failing to provide those disclosures and information required by Federal and
14 State law relative to the PPG stock sold to Plaintiffs. On information and belief, Plaintiffs allege
15 that Defendants ACKLEY and SMITH have utilized their positions as majority shareholders to
16 defraud Plaintiffs by failing to provide those disclosures and information required by Federal and
17 State law relative to the PPG stock sold to Plaintiffs.

18 89. On information and belief, Plaintiffs allege that at no time did Defendants Stephen
19 Ackley and Bradley Smith, nor majority shareholders ACKLEY and SMITH, disclose to PPG's
20 other shareholders (the Plaintiffs) the nature of those actions noted herein in Paragraphs 85
21 through 88, and obtain thereby the approval in good faith of the disinterested shareholders, as
22 defined by Section 153 Corporations Code.

23 90. On information and belief, Plaintiffs allege that in acting as described above,
24 neither Defendants Stephen Ackley and Bradley Smith, nor majority shareholders ACKLEY and
25 SMITH, acted with the care required of directors and majority shareholders, respectively. On
26 information and belief, Plaintiffs allege that in acting as described above, Defendants Stephen
27 Ackley and Bradley Smith, and majority shareholders ACKLEY and SMITH, did breach their
28 fiduciary duty to Plaintiffs.

91. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have been damaged in a sum to be determined at trial, but in an amount not less than \$1 million.

92. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would have been entitled had not Defendants defrauded and cheated Plaintiffs, abused and breached their fiduciary duties to Plaintiffs, and terminated Plaintiff CHRISTOPHER WUTHMANN in bad faith.

93. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$ 3 million for depriving Plaintiffs of their ability to bargain for severance benefits had not Defendants defrauded and cheated Plaintiffs, and abused and breached their fiduciary duties to Plaintiffs, by claiming that Plaintiffs owed ACKLEY and SMITH in excess of \$1.1 million in principal and interest on the purchase of the Second 10%.

94. On information and belief, Plaintiffs allege that the aforementioned conduct of ACKLEY and SMITH involved intentional misrepresentation; willful deceit; knowing and intentional concealment of material facts known to the Defendants; and, knowing and willful exploitation of their fiduciary relationship with Plaintiffs with the intent on the part of the Defendants to thereby deprive Plaintiffs of property and legal rights or to otherwise cause injury, and was despicable conduct and subjected Plaintiffs to cruel and unjust hardships in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

SIXTH CAUSE OF ACTION

(Breach of Stock Purchase Contract Against ACKLEY and SMITH)

95. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this Complaint.

96. On or about December, 2000 at Menlo Park, California, Plaintiffs and Defendants ACKLEY entered into a written agreement, a copy of which is attached hereto as Exhibits "C"

1 and made a part of this Complaint. On information and belief, Plaintiffs allege that this written
2 agreement was drafted by Defendants ACKLEY or those acting on behalf of ACKLEY.

3 97. On or about December, 2000 at Menlo Park, California, Plaintiffs and Defendants
4 SMITH entered into a written agreement, a copy of which is attached hereto as Exhibit "D" and
5 made a part of this Complaint. On information and belief, Plaintiffs allege that this written
6 agreement was drafted by Defendants SMITH or those acting on behalf of SMITH.

7 98. Plaintiffs have performed all conditions, covenants, and promises required on their
8 part to be performed in accordance with the terms and conditions of the contract.

9 99. On information and belief, Plaintiffs allege that during the course of discussing the
10 written agreements and thereafter until present ACKLEY and SMITH breached the Contracts by
11 telling Plaintiffs that according to the formula set forth in each of the Contracts (see Paragraph
12 A.2. in Exhibits "C" and "D") the purchase price was \$1.2 million. On information and belief,
13 Plaintiffs allege that Plaintiffs had no reason to believe that such a representation and deceit was
14 not correct until December, 2005.

15 100. On information and belief, Plaintiffs allege that using the formula contained in the
16 Contracts set forth in Exhibit "E", and using the data provided by ACKLEY and SMITH to
17 calculate said values according to Paragraph A.2 of each contract, the actual purchase price for
18 the equity purchased is \$12,186. On information and belief, Plaintiffs allege that Exhibit "E"
19 hereto shows the calculation of the formula utilizing the data provided by Defendant Maryan
20 Ackley to Plaintiff CHRISTOPHER WUTHMANN in the summer of 2005. On information and
21 belief, Plaintiffs allege that this data was given to Plaintiff CHRISTOPHER WUTHMANN at the
22 start of the so-called severance discussions noted herein. On information and belief, Plaintiffs
23 allege that the binder provided in the summer of 2005 and referenced in Exhibit "E" only showed
24 the \$1.2 million purchase price figure; it did not show the calculation (or any calculation) of the
25 purchase price, such as that set forth in Exhibit "E".

26 101. On information and belief, Plaintiffs allege that ACKLEY and SMITH further
27 represented that they had all right, title and interest in the shares to be conveyed when in fact the
28 shares had not been validly issued to ACKLEY and SMITH. Such false representation was a

1 breach of the written agreement.

2 102. On information and belief, Plaintiffs allege that ACKLEY and SMITH further
3 represented that the shares to be conveyed had satisfied all requirements of California and Federal
4 law, and thus could be validly conveyed to Plaintiffs. On information and belief, Plaintiffs allege
5 that the shares were not qualified, registered, or exempt under either California or Federal law.
6 Such false representation was a breach of the written agreement.

7 103. On information and belief, Plaintiffs allege that Defendants ACKLEY and SMITH
8 have continued to breach the Contracts set forth in Exhibits "C" and "D" by accepting to date a
9 total of \$405,000, when in fact the total purchase price was \$12,186, which was paid by Plaintiffs
10 to ACKLEY and SMITH over the intervening years.

11 104. As a result of the breach of Defendants ACKLEY and SMITH, Plaintiffs have
12 been damaged in a sum to be determined at trial, but in an amount not less than \$392,814, with
13 interest thereon.

14 **SEVENTH CAUSE OF ACTION**

15 (Fraud and Deceit Action For Intentional Misrepresentation of Fact Against ACKLEY and
16 SMITH: § 1710(1) C.C.)

17 105. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
18 Complaint.

19 106. On information and belief, Plaintiffs allege that ACKLEY and SMITH made those
20 representations, as herein alleged.

21 107. On information and belief, Plaintiffs allege that the representations made by
22 ACKLEY and SMITH were in fact false. On information and belief, Plaintiffs allege that the true
23 facts were:

- 24 a. The purchase price of the Second 10% under the contracts set forth in
- 25 Exhibits "C" and "D" was \$12,186, not \$1.2 million.
- 26 b. Plaintiffs do not currently owe ACKLEY and SMITH a sum of in excess of
- 27 \$1.1 million in principal and interest for the purchase of the Second 10%.
- 28 In fact Plaintiffs are owed a refund of \$392,814.

1 c. The sale of the Second 10% was not in compliance with the requirements
2 of Federal and State law. The shares were not validly issued to ACKLEY
3 and SMITH, and the sale to Plaintiffs was not valid under Federal or
4 California law.

5 d. ACKLEY and SMITH desired to convert, acquire, annex and obtain those
6 moneys and that cashflow that would otherwise have gone to Plaintiffs if
7 Plaintiff CHRISTOPHER WUTHMANN had remained a shareholder of
8 PPG and investor in the project LLC's.

9 108. On information and belief, Plaintiffs allege that when ACKLEY and SMITH made
10 these representations, they knew them to be false and made these representations with the
11 intention to deceive and defraud Plaintiffs and to induce Plaintiffs to act in reliance on these
12 representations in the manner herein alleged, or with the expectation that Plaintiffs would so act.

13 109. On information and belief, Plaintiffs allege that, at the time these representations
14 were made by ACKLEY and SMITH and at the time that Plaintiffs took the actions herein
15 alleged, Plaintiffs were ignorant of the falsity of ACKLEY and SMITH's representations and
16 believed them to be true. On information and belief, Plaintiffs allege that in reliance on these
17 representations, Plaintiffs were induced to and did make those payments and purchase said stock
18 as described herein. On information and belief, Plaintiffs allege that had Plaintiffs known the
19 actual facts, they would not have taken such actions. On information and belief, Plaintiffs allege
20 that Plaintiffs' reliance of ACKLEY's and SMITH's representations was justified because
21 Plaintiff CHRISTOPHER WUTHMANN had worked closely with Stephen Ackley and Bradley
22 Smith for years and trusted them completely, and because all of his knowledge of the financial
23 circumstances of PPG and the price of the stock was supplied by ACKLEY and SMITH and he
24 had no reason to doubt the alleged accuracy of the representations made.

25 110. On information and belief, Plaintiffs allege that as a proximate result of the
26 fraudulent conduct of ACKLEY and SMITH as herein alleged, Plaintiffs were induced to expend
27 not less than \$405,000, by reason of which Plaintiffs have been damaged in the sum to be proven
28 at trial, but in a sum not less than \$405 thousand, with interest thereon.

111. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would have been entitled had not Defendants defrauded and cheated Plaintiffs, abused and breached their fiduciary duties to Plaintiffs, and terminated Plaintiff CHRISTOPHER WUTHMANN in bad faith.

112. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$ 3 million for depriving Plaintiffs of their ability to bargain for severance benefits had not Defendants defrauded and cheated Plaintiffs, and abused and breached their fiduciary duties to Plaintiffs, by claiming that Plaintiffs owed ACKLEY and SMITH in excess of \$1.1 million in principal and interest on the purchase of the Second 10%.

113. On information and belief, Plaintiffs allege that the aforementioned conduct of ACKLEY and SMITH involved intentional misrepresentation; willful deceit; knowing and intentional concealment of material facts known to the Defendants; and, knowing and willful exploitation of their fiduciary relationship with Plaintiffs with the intent on the part of the Defendants to thereby deprive Plaintiffs of property and legal rights or to otherwise cause injury, and was despicable conduct and subjected Plaintiffs to cruel and unjust hardships in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

EIGHTH CAUSE OF ACTION

(Fraud and Deceit Action For Suppression of Fact Against ACKLEY and SMITH:

§ 1710(3) C.C.)

114. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this Complaint.

115. On information and belief, Plaintiffs allege that ACKLEY and SMITH suppressed those facts, as herein alleged.

116. On information and belief, Plaintiffs allege that the information suppressed by ACKLEY and SMITH was likely to and did in fact mislead Plaintiffs, especially in light of the

1 other affirmative representations made by ACKLEY and SMITH. On information and belief,
 2 Plaintiffs allege that the true facts which were suppressed were that:

- 3 a. The purchase price of the Second 10% under the contracts set forth in
 4 Exhibit B was \$12,186, not \$1.2 million.
- 5 b. Plaintiffs do not currently owe ACKLEY and SMITH a sum of in excess of
 6 \$1.1 million in principal and interest for the purchase of the Second 10%.
- 7 c. Plaintiffs are owed a refund of \$392,814 for the overpayment on the
 8 purchase of the Second 10%.
- 9 d. The sale of the Second 10% was not in compliance with the requirements
 10 of Federal and State law. The shares were not validly issued to ACKLEY
 11 and SMITH, and the sale to Plaintiffs was not valid under Federal or
 12 California law.
- 13 e. ACKLEY and SMITH desired to convert, acquire, annex and obtain those
 14 moneys and that cashflow that would otherwise have gone to Plaintiffs if
 15 Plaintiff CHRISTOPHER WUTHMANN had remained a shareholder of
 16 PPG and investor in the project LLC's.

17 117. On information and belief, Plaintiffs allege that the combination of representations
 18 made, as noted herein, and failures to disclose information and suppression of information herein
 19 alleged to have been made by ACKLEY and SMITH were made with the intent to induce
 20 Plaintiffs to act in the manner herein alleged in reliance thereon.

21 118. On information and belief, Plaintiffs allege that Plaintiffs, at the time these failures
 22 to disclose and suppression of facts occurred, were ignorant of the existence of the facts that
 23 ACKLEY and SMITH suppressed and failed to disclose. On information and belief, Plaintiffs
 24 allege that had Plaintiffs known the actual facts, they would not have taken the actions noted
 25 herein. On information and belief, Plaintiffs allege that Plaintiffs' reliance of ACKLEY and
 26 SMITH's deceptions was justified because Plaintiff CHRISTOPHER WUTHMANN had worked
 27 closely with Stephen Ackley and Bradley Smith for years and trusted them completely, and
 28 because all of his knowledge of the financial circumstances of PPG and the price of the stock was

1 supplied by ACKLEY and SMITH and he had no reason to doubt the alleged accuracy of the
2 representations made.

3 119. On information and belief, Plaintiffs allege that as a proximate result of the
4 fraudulent and deceitful conduct of ACKLEY and SMITH as herein alleged, Plaintiffs were
5 induced to expend \$405,000, by reason of which Plaintiffs have been damaged in the sum to be
6 proven at trial, but in a sum not less than \$405 thousand, with interest thereon.

7 120. For special damages in the sum of \$ 5 million for depriving Plaintiffs of the future
8 cashflow and benefits to which they would have been entitled had not Defendants defrauded and
9 cheated Plaintiffs, abused and breached their fiduciary duties to Plaintiffs, and terminated
10 Plaintiff CHRISTOPHER WUTHMANN in bad faith.

11 121. For special damages in the sum of \$ 3 million for depriving Plaintiffs of their
12 ability to bargain for severance benefits had not Defendants defrauded and cheated Plaintiffs, and
13 abused and breached their fiduciary duties to Plaintiffs, by claiming that Plaintiffs owed
14 ACKLEY and SMITH in excess of \$1.1 million in principal and interest for the purchase of the
15 Second 10%.

16 122. The aforementioned conduct of ACKLEY and SMITH involved intentional
17 misrepresentation; willful deceit; knowing and intentional concealment of material facts known to
18 the Defendants; and, knowing and willful exploitation of their fiduciary relationship with
19 Plaintiffs with the intent on the part of the Defendants to thereby deprive Plaintiffs of property
20 and legal rights or to otherwise cause injury, and was despicable conduct and subjected Plaintiffs
21 to cruel and unjust hardships in conscious disregard of Plaintiffs' rights, so as to justify an award
22 of exemplary and punitive damages.

23 **NINTH CAUSE OF ACTION**

24 (Negligent Misrepresentation of Fact Against ACKLEY and SMITH: § 1710(2) C.C.)

25 123. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 and 107 of
26 this Complaint.

27 124. On information and belief, Plaintiffs allege that since the contracts attached hereto
28 in Exhibits "C" and "D" were drafted by ACKLEY and SMITH, or by those acting on their

1 behalf, and since they had control over and knowledge of all the financial information necessary
2 to calculate the true values for the purchase (as shown by Exhibit "E"), when ACKLEY and
3 SMITH made the representations noted herein (as noted in Paragraph 107 hereinabove) they had
4 no reasonable ground for believing them to be true in that there was no reasonable basis for
5 believing them to be true.

6 125. On information and belief, Plaintiffs allege that ACKLEY and SMITH made these
7 representations with the intention of inducing Plaintiffs to act in reliance thereon in the manner
8 herein alleged, or with the expectation that Plaintiffs would so act.

9 126. On information and belief, Plaintiffs allege that as a proximate result of the
10 fraudulent conduct of ACKLEY and SMITH as herein alleged, Plaintiffs were induced to expand
11 not less than \$405,000, by reason of which Plaintiffs have been damaged in the sum to be proven
12 at trial, but in a sum not less than \$405 thousand, with interest thereon.

13 127. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith
14 and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum
15 of \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would
16 have been entitled had not Defendants defrauded and cheated Plaintiffs, abused and breached
17 their fiduciary duties to Plaintiffs, and terminated Plaintiff CHRISTOPHER WUTHMANN in
18 bad faith.

19 128. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith
20 and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum
21 of \$ 3 million for depriving Plaintiffs of their ability to bargain for severance benefits had not
22 Defendants defrauded and cheated Plaintiffs, and abused and breached their fiduciary duties to
23 Plaintiffs, by claiming that Plaintiffs owed ACKLEY and SMITH in excess of \$1.1 million in
24 principal and interest for the purchase of the Second 10%.

25 **TENTH CAUSE OF ACTION**

26 (Negligence Per Se Against ACKLEY and SMITH)

27 129. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
28 Complaint.

1 130. On information and belief, Plaintiffs allege that at all times relevant, ACKLEY
2 and SMITH were the owners of equity shares in PPG.

3 131. On information and belief, Plaintiffs allege that on or about December, 2000
4 ACKLEY and SMITH caused to be sold to Plaintiffs the Second 10%.

5 132. On information and belief, Plaintiffs allege that at this time there was in effect
6 numerous Federal and State statutes and regulations pertaining to the sale of equity shares,
7 including but not limited to Section 25310 Corporations Code and 15 U.S.C. § 77e. These laws
8 and their implementing regulations are of the type meant to protect Plaintiffs from the acts of
9 ACKLEY and SMITH as noted herein.

10 133. On information and belief, Plaintiffs allege that at all times relevant ACKLEY and
11 SMITH were in violation of each and all of said statutes and their implementing regulations.

12 134. On information and belief, Plaintiffs allege that as a proximate result of the
13 negligent conduct of ACKLEY and SMITH as herein alleged, Plaintiffs were induced to expend
14 \$405,000, by reason of which Plaintiffs have been damaged in the sum to be proven at trial, but in
15 a sum not less than \$405 thousand, with interest thereon.

16 135. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith
17 and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum
18 of \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would
19 have been entitled had not Defendants defrauded and cheated Plaintiffs, abused and breached
20 their fiduciary duties to Plaintiffs, and terminated Plaintiff CHRISTOPHER WUTHMANN in
21 bad faith.

22 136. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith
23 and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum
24 of \$ 3 million for depriving Plaintiffs of their ability to bargain for severance benefits had not
25 Defendants defrauded and cheated Plaintiffs, and abused and breached their fiduciary duties to
26 Plaintiffs, by claiming that Plaintiffs owed ACKLEY and SMITH in excess of \$1.1 million in
27 principal and interest for the purchase of the Second 10% of PPG equity stock.
28

ELEVENTH CAUSE OF ACTION

(Failure to Pay Demand Notes Against PACIFIC PENINSULA GROUP and
WHITEHAWK L.L.C.)

137. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this Complaint.

138. At various times on or after August 27, 2001, in the County of San Mateo, for valuable consideration, Defendants PACIFIC PENINSULA GROUP and WHITEHAWK L.L.C. made, executed, and delivered to Plaintiffs promissory notes on the dates and in the principal amounts set forth below, or in the case of the two loans made in October, 2005, the promise of "demand notes" in their usual form and terms:

Date of Note	Borrower	Amount (\$)
8/20/02	PPG	16800.27
11/14/02	PPG	1838.59
12/13/02	PPG	30,000
8/8/05	WHITEHAWK L.L.C.	100,000
10/28/05	WHITEHAWK L.L.C.	25,000
8/27/01	"PPG-Whitehawk Construction Project"	50,000
2/28/02	"PPG-Whitehawk Construction Project"	100,000
7/8/02	"PPG-Whitehawk Construction Project"	30,000
10/30/02	"PPG construction project Whitehawk"	35,000
10/20/05	WHITEHAWK L.L.C.	225,000
10/28/05	WHITEHAWK L.L.C.	100,000

139. On information and belief, Plaintiffs allege that all of said promissory notes are payable on demand.

140. On or about February 13, 2006 Plaintiffs demanded that PACIFIC PENINSULA GROUP and WHITEHAWK L.L.C. pay the principal amounts of these notes.

141. Shortly thereafter Plaintiffs demanded that if these defendants contended that one

1 or more of the notes has been paid, then these defendants provide proof of said payment.
 2 Plaintiffs also demanded that these defendants search their records for other notes that may be
 3 outstanding, and cause those to be paid also. Plaintiffs also demanded that defendants produce
 4 copies of the notes and any proofs of payment as part of their inspection of records pursuant to
 5 Section 7.3 of the PPG Bylaws. See Exhibit "F". No copy of any note or proof of any payment
 6 was produced by Defendants during said inspection.

7 142. As stated in the amended demand, these notes (to the extent proof was not
 8 provided that they had been paid) and such other notes as these defendants could locate were to
 9 be paid by not later than February 21, 2006.

10 143. These Defendants have failed and continue to fail to pay the notes, or any part of
 11 them, and there is now due, owing, and unpaid from these defendants the sum of the principal
 12 thereof in an amount of not less than \$713,639.31.

13 **TWELTH CAUSE OF ACTION**

14 (Violation of California Business and Professions Code Section 17200 et seq. Against
 15 ACKLEY and SMITH)

16 144. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
 17 Complaint.

18 145. On information and belief, Plaintiffs allege that as noted herein, ACKLEY and
 19 SMITH have engaged in conduct that violates the following statutory laws and their
 20 implementing regulations pertaining to the sale of securities: Section 25130 Corporations Code
 21 and 15 U.S.C. § 77e.

22 146. On information and belief, Plaintiffs allege that by committing the acts alleged
 23 above, ACKLEY and SMITH have engaged in unlawful business practices that constitute unfair
 24 competition within the meaning of Business & Professions Code §17200.

25 147. Wherefore Plaintiffs are entitled to restitution of all moneys paid as a result of the
 26 illegal business practices of ACKLEY and SMITH in an amount of not less than \$1,106,453.31.

27 **THIRTEENTH CAUSE OF ACTION**

28 (Bad Faith Employment Termination Against ACKLEY and SMITH)

1 148. Plaintiffs incorporate herein as if stated in full Paragraphs 1 through 59 of this
2 Complaint.

3 149. On information and belief, Plaintiffs allege that in 1998, Plaintiff CHRISTOPHER
4 WUTHMANN and ACKLEY and SMITH entered into a stock purchase agreement under which
5 Plaintiff CHRISTOPHER WUTHMANN received 10% of the total equity shares of PPG. See
6 Exhibits "A" and "B" attached hereto.

7 150. On information and belief, Plaintiffs allege that as a result of the 1998 Restricted
8 Stock Purchase Agreement, Plaintiff CHRISTOPHER WUTHMANN was entitled to 10% of the
9 after-tax profits in PPG.

10 151. On information and belief, Plaintiffs allege that in December 2000, Plaintiff
11 CHRISTOPHER WUTHMANN received an additional 10% of the equity in PPG pursuant to the
12 2000 Restricted Stock Purchase Agreement attached hereto as Exhibits "C" and "D".

13 152. On information and belief, Plaintiffs allege that as of the December 2000
14 "Restricted Stock Purchase Agreement," Plaintiff CHRISTOPHER WUTHMANN was entitled to
15 20% of the after-tax profits of PPG.

16 153. On information and belief, Plaintiffs allege that in 2005, ACKLEY and SMITH
17 realized that the many projects under development, near completion, coming onto market, or
18 likely soon to be sold would produce in the post-2005 time period very substantial returns for
19 PPG or for the project development LLC's in which ACKLEY, SMITH, and Plaintiff
20 CHRISTOPHER WUTHMANN invested. On information and belief, Plaintiffs allege that in
21 July 2005, Defendants Stephen Ackley and Bradley Smith informed Plaintiff CHRISTOPHER
22 WUTHMANN that they wished to terminate his employment with PPG. On information and
23 belief, Plaintiffs allege that out of avarice, covetousness, and greed, ACKLEY and SMITH
24 willfully and intentionally conspired, planned, and decided to terminate Plaintiff CHRISTOPHER
25 WUTHMANN's employment with PPG effective December 31, 2005, in order to convert,
26 acquire, annex and obtain those moneys and that cash flow that would otherwise have gone to
27 Plaintiffs. On information and belief, Plaintiffs allege that not satisfied with the likelihood that
28 they themselves would make many millions of dollars, ACKLEY and SMITH conspired and

acted to deprive Plaintiff CHRISTOPHER WUTHMANN of his share.

154. On information and belief, Plaintiffs allege that as a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have been damaged in a sum to be determined at trial, but in an amount not less than \$1 million.

155. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would have been entitled had not Defendants defrauded and cheated Plaintiffs, abused and breached their fiduciary duties to Plaintiffs, and terminated Plaintiff CHRISTOPHER WUTHMANN in bad faith.

156. As a proximate result of the acts of Defendants Stephen Ackley and Bradley Smith and shareholders ACKLEY and SMITH the Plaintiffs have incurred special damages in the sum of \$ 3 million for depriving Plaintiffs of their ability to bargain for severance benefits had not Defendants defrauded and cheated Plaintiffs, and abused and breached their fiduciary duties to Plaintiffs, by claiming that Plaintiffs owed ACKLEY and SMITH in excess of \$1.1 million in principal and interest on the purchase of the Second 10% of PPG equity stock.

PRAYER FOR RELIEF

Wherefore, Plaintiffs prays for relief against all Defendants as follows:

1. With respect to the First and Third Causes of Action, for compensatory damages in the sum of not less than \$ 987,184 pertaining to the Second 10%.

2. With respect to the First, Second, Third, and Fourth Causes of Action, for compensatory damages or restitution of \$713,639.31 pertaining to the demand notes.

3. With respect to the Fifth, Seventh, Eighth, and Thirteenth Causes of Action, for compensatory damages in the sum of not less than \$1 million.

4. With respect to the Fifth, Seventh, Eighth, Ninth, Tenth, and Thirteenth Causes of Action, for special damages in the sum of not less than \$5 million for depriving Plaintiffs of the future cashflow and benefits to which they would have been entitled had not Defendants

1 defrauded and cheated Plaintiffs, abused and breached their fiduciary duties to Plaintiffs, and
 2 terminated Plaintiff CHRISTOPHER WUTHMANN in bad faith.

3 5. With respect to the Fifth, Seventh, Eighth, Ninth, Tenth, and Thirteenth Causes of
 4 Action, for special damages in the sum of not less than \$3 million for depriving Plaintiffs of their
 5 ability to bargain for severance benefits had not Defendants defrauded and cheated Plaintiffs, and
 6 abused and breached their fiduciary duties to Plaintiffs, by claiming that Plaintiffs owed
 7 ACKLEY and SMITH in excess of \$1.1 million in principal and interest for the purchase of the
 8 Second 10%.

9 6. With respect to the First, Fifth, and Sixth Causes of Action, for restitution in the
 10 sum of not less than \$392,814 related to the purchase of the Second 10%.

11 7. With respect to the Second, Fourth, Ninth, and Tenth Causes of Action, for
 12 restitution in the sum of not less than \$405,000.

13 8. With respect to the Eleventh Cause of Action, for the sum of not less than
 14 \$713,639.31 in the principal amount due and owing on the Notes.

15 9. With respect to the Twelfth Cause of Action, for restitution in the sum of not less
 16 than \$1,106,453.31.

17 10. With respect to the First through Tenth and Twelfth and Thirteenth Causes of
 18 Action, for the legal rate of interest on all sums noted herein.

19 11. With respect to the Fifth, Seventh, and Eighth Causes of Action, for exemplary
 20 damages.

21 12. For reasonable attorney's fees according to proof.

22 13. For costs of the suit.

23 14. For such other relief as the Court deems just and proper.

24 ///

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28 ///

1 Dated: February 24, 2006

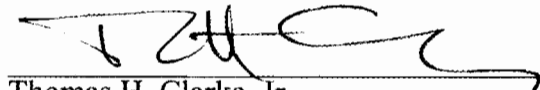
ROPERS, MAJESKI, KOHN & BENTLEY

2
3 By: 

4 THOMAS H. CLARKE, JR.
5 Attorneys for Plaintiffs
6 CHRISTOPHER E. WUTHMANN &
7 ALLISON ROCK, Husband & Wife

8 DEMAND FOR JURY TRIAL

9 Plaintiffs request a jury trial.

10
11 

12 Thomas H. Clarke, Jr.
13 Counsel For Plaintiffs CHRISTOPHER WUTHMANN
14 And ALLISON ROCK, Husband And Wife.

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco